



**FOR CLERK USE ONLY**  
City Council  
Item No. 10

## CITY COUNCIL AGENDA FACT SHEET

General Services Department  
Department

March 16, 2010  
Requested Date

1. **Request:**

Council Approval ☒

Other (specify) ☐

Information Only/  
Presentation ☐

Hearing ☐

2. **Requested Action:**

Authorize the Award of a contract to W2 Design Inc. and Traffic Safety Engineers to provide consultant services for administering the Economic Development Administration Grant No. 71-01-06185.

3. **Fiscal Impact:**

Revenue:

Increase ☐

Decrease ☐

Cost:

Increase ☐

Decrease ☐

Does Not Apply ☒

Source:

Amount:

Source:

Amount:

213-57003-3141

\$44,489.50 (Measure D)

4. **Reviewed By:**

Finance Dept. on

03/10/2010

By: [Signature]

Comments:

*Meas. D balance \$3.961 million as of this date.*

City Attorney on

By:

Comments:

**Note: Back up must be submitted along with this form. Deadline is 5:00 p.m., 2 Fridays before the scheduled meeting date.**

**CLERK USE ONLY:**

CITY COUNCIL DATE:

Action ☐

Consent ☐

Hearing ☐

Filing ☐

Presentation ☐

Other(specify) ☐

Reviewed by: City Clerk

Date

City Manager

Date

# **CITY COUNCIL AGENDA REPORT**

**SUBJECT:** Authorize the award of a contract for administration services of the Economic Development Administration Grant No. 71-01-06185.

**AGENDA DATE:** March 16, 2010

**PREPARED BY:** Veronica Atondo, P.E., Interim Engineering Manager  
Rosalind Guerrero, EDA Director  
Nick Fenley, General Services Director

**APPROVED FOR AGENDA BY:** Victor M. Carrillo, City Manager

**RECOMMENDATION:** It is recommended the City Council authorize the following:  
Authorize the Award of a contract to W2 Design Inc. and Traffic Safety Engineers to provide consultant services for administering the Economic Development Administration Grant No. 71-01-06185.  
Authorize City Manager to execute an agreement for the above described grant administration services.

**FISCAL IMPACT:** There would not be a fiscal impact to the City's General Fund. Federally-funded EDA Award No. 71-01-06185 and Measure D Funding will be used to pay for the subject contract. The contract amount is \$88,979.00. Fifty percent of the contract will be reimbursed to the City by EDA.

**BACKGROUND INFORMATION: (Prior action/information)**

**October 28, 2009-** City submitted a letter to EDA requesting approval for specific consultant to serve as program manager and assist city in administering and implementing the EDA award, work to be paid from the EDA grant received.

**November 5, 2009** – EDA response to City's October 28, 2009 correspondence in which EDA refused approval of city's appointment of specific consultant for EDA grant administration services without competitive procurement.

**January 26, 2010-** City published a Request for Proposals to provide grant administration services with a deadline for submittals no later than March 1, 2010.

**March 1, 2010-** City received two proposals, W-2 Design, Inc, and BJ Engineering and Surveying, Inc.

**March 4 and 8, 2010-** Three-member panel evaluated received proposals and scored them based on quality of submittals and adherence to specified criteria.

**DISCUSSION (Current consideration):**

The City of Calexico will be required to ensure all work performed is in compliance with EDA mandates including but not limited to: develop request for proposals for construction contract administration and field inspection; plan check and provide other technical assistance to design consultant; submit PS&E packages to EDA for review and approval; advertise, solicit, review and evaluate project construction bids; prepare quarterly performance reports; maintain current expenditure record; prepare progress reimbursement payment requests; prepare project final report and final reimbursement.

City staff recommends that in order to meet and ensure all mandates of the Economic Development Administration are complied; the selected qualified consultant is awarded the contract. City staff is currently administering and overseeing other construction projects and is unable to devote the time required for the administrative services to this project to the level required by EDA.

**Pros:**

Authorizing the award of the contract for the administration services of the EDA project will allow the city to meet all EDA requirements and ensure successful completion of the project per EDA mandated deadlines.

**Cons:**

Should the city not authorize the contract award for administration services, the award of the \$3 million dollar grant could be impaired. If the City does not meet the mandates, the city will be unable to request EDA funding assistance for an approximate period of 5 years.

**DOCUMENT(S) ATTACHED:**

**Exhibit 1: Request for Proposals (RFP)**

**Exhibit 2: Standard Agreement with costs**

**Agenda Item No. \_\_\_\_**

**Page \_\_\_\_ Of \_\_\_\_**

## AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into as of the \_\_\_ day of March, 2010, by and between the City of Calexico ("City") and W2 Design, Inc. and Traffic Safety Engineers ("Consultant").

### RECITALS

A. Consultant is specially trained, experienced and competent to perform the special services which will be required by this Agreement; and

B. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.

### AGREEMENT

1. Scope of Services. The Consultant shall furnish the following services in a professional manner. Consultant shall perform the services described on Exhibit A which is attached hereto and incorporated herein by reference. Consultant shall provide said services at the time, place, and in the manner specified in Exhibit A, subject to the direction of the City through its staff that it may provide from time to time.
2. Time of Performance. The services of Consultant are to commence upon execution of this Agreement and shall continue until all authorized work is approved by the City. All such work shall be completed no later than April 2014. Time is of the essence for every provision of this agreement that states a time for performance and for every deadline imposed by the City.
3. Compensation. Compensation to be paid to Consultant shall be in accordance with the Schedule of Charges set forth in Exhibit B, which is attached hereto and incorporated herein by reference. In no event shall Consultant's compensation exceed \$88,979.00 without additional authorization from the City. Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.
4. Method of Payment. Consultant shall submit monthly billings to City describing the work performed during the preceding month. Consultant's bills shall include a brief description of the services performed, the date the services were performed, the number of hours spent and by whom, and a description of any reimbursable expenditures. City shall pay Consultant no later than 30 days after approval of the monthly invoice by City staff. When payments made by City equal 90% of the maximum fee provided for in this Agreement, no further payments shall be made until the final work under this Agreement has been accepted by City.

5. Ownership of Documents. All plans, studies, documents and other writings prepared by and for Consultant, its officers, employees and agents and subcontractors in the course of implementing this Agreement, except working notes and internal documents, shall become the property of the City upon payment to Consultant for such work, and the City shall have the sole right to use such materials in its discretion without further compensation to Consultant or to any other party. Consultant shall, at Consultant's expense, provide such reports, plans, studies, documents and other writings to City upon written request.

6. Independent Contractor. It is understood that Consultant, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and shall not act as an agent or employee of the City. Consultant shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

7. Interest of Consultant. Consultant (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by and during this Agreement or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this Agreement.

Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

- a. will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the City or of any City official, other than normal agreement monitoring; and
- b. possesses no authority with respect to any City decision beyond rendition of information, advice, recommendation or counsel. (FPPC Reg. 18700(a)(2).)

8. Professional Ability of Consultant. City has relied upon the professional training and ability of Consultant to perform the services hereunder as a material inducement to enter into this Agreement. Consultant shall therefore provide properly skilled professional and technical personnel to perform all services under this Agreement. All work performed by Consultant under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

9. Indemnity. Consultant [or however design professional is referenced] agrees to indemnify, including the cost to defend, the City, and its officers, agents and employees from any and all claims, demands, costs or liability that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant and its agents in the performance of services under this contract. This indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense arising from the sole negligence, willful misconduct or defects in design by the City or its agents, servants, or

independent contractors who are directly responsible to the City, or the active negligence of the City.

10. Insurance Requirements.

a. Consultant, at Consultant's own cost and expense, shall procure and maintain, for the duration of the contract, the following insurance policies.

i. Workers' Compensation Coverage. Consultant shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for his/her employees in accordance with the laws of the State of California. In addition, Consultant shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California for all of the subcontractor's employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by the City at least thirty (30) days prior to such change. The insurer shall agree to waive all rights of subrogation against City, its officers, agents, employees and volunteers for losses arising from work performed by Consultant for City. This provision shall not apply if Consultant has no employees performing work under this Agreement. If the Consultant has no employees for the purposes of this Agreement, Consultant shall sign the "Certificate of Exemption from Workers' Compensation Insurance" which is attached hereto as Exhibit C.

ii. General Liability Coverage. Consultant shall maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If a commercial general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit.

iii. Automobile Liability Coverage. Consultant shall maintain automobile liability insurance covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount of not less than one million dollars (\$1,000,000) combined single limit for each occurrence.

iv. Errors and Omissions Liability. Consultant shall maintain errors and omissions liability insurance for all work performed under this Agreement in an amount of not less than one million dollars (\$1,000,000).

b. Policy Endorsements. Each general liability and automobile liability insurance policy shall be with insurers possessing a Best's rating of no less than A:VII and shall be endorsed with the following specific language:

i. The City of Calexico, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work or operations.

ii. This policy shall be considered primary insurance as respects the City, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the City, including any self-insured retention the City may have, shall be considered excess insurance only and shall not contribute with it.

iii. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

iv. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents or volunteers.

v. The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days written notice has been received by the City.

c. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

d. Certificates of Insurance and Endorsements. Consultant shall provide certificates of insurance with original endorsements to City as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the City on or before commencement of performance of this Agreement. Current certification of insurance shall be kept on file with the City at all times during the term of this Agreement.

11. Compliance with Laws. Consultant shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations.

12. Licenses. Consultant represents and warrants to City that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required of Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals which are legally required of Consultant to practice its profession. Consultant shall obtain a City of Calexico Business License.

14. Written Notification. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth herein below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to Consultant:

a. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant to this Agreement.

c. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Manager, City Attorney, City Auditor or a designated representative of these officers. Copies of such documents shall be provided to the City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

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16. Entire Agreement. This Agreement constitutes the complete and exclusive statement of Agreement between the City and Consultant. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement.
17. Amendments. This Agreement may be modified or amended only by a written document executed by both Consultant and City and approved as to form by the City Attorney.
18. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.
19. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.
20. Assignment and Subcontracting. The parties recognize that a substantial inducement to City for entering into this Agreement is the professional reputation, experience and competence of Consultant. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express consent of the City. Consultant shall not subcontract any portion of the work to be performed under this Agreement without the written authorization of the City. If City consents to such subcontract, Consultant shall be fully responsible to City for all acts or omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between City and subcontractor nor shall it create any obligation on the part of the City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise is required by law.
21. Termination. This Agreement may be terminated immediately for cause or by either party without cause upon fifteen days' written notice of termination. Upon termination, Consultant shall be entitled to compensation for services performed up to the effective date of termination.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

CITY OF CALEXICO:

CONSULTANT:

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Victor M. Carrillo  
City Manager

APPROVED AS TO FORM:

ATTEST:

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Jennifer M. Lyon  
City Attorney

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Lourdes Cordova  
City Clerk

**EXHIBIT A**  
**SCOPE OF SERVICES**

## Scope of Work

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The W2/TSE Team members will perform the scope of services based on the City's RFP outlined to implement management of the EDA grant that would consist of the following work tasks:

1. Develop Request for Proposals for soliciting consultants to perform construction administration and field inspection services for the EDA funded project.
2. Review and evaluate consultant proposals and recommend, to the City, the successful consultant to perform construction management contract and field inspection services for the EDA funded project.
3. Prepare a letter with consultant selection methodology to EDA requesting approval to award consultant agreement contracts. Revise consultant agreement contract incorporating, if any, additional EDA requirements and changes and re-submit to EDA for final approval.
4. Prepare City Council Agenda Report recommending approval to award consultant agreement contracts.
5. Coordinate, assist, supervise, and provide technical data and design decisions to design consultants. Ensure that all EDA required minimum wage rate schedules, minority and woman-owned subcontract requirements, project site EDA construction sign, and other EDA required contract boilerplates are included in the PS&E packages.
6. Submit PS&E packages to EDA for their review and approval to advertise projects for construction bids.
7. Advertise and solicit project construction bids.
8. Review and evaluate construction bids received, and determine the lowest responsible bidder and recommend the lowest responsible bidder to the City.
9. Prepare a letter to EDA requesting approval to award construction contract.
10. Prepare City Council Agenda Report recommending approval to award construction contract.
11. Prepare Quarterly Performance Reports to EDA.
12. Maintain a current expenditure record of all elements of the project. Project expenditures include consultant fees, material cost, laboratory cost, site development cost, construction cost, survey cost, inspection cost, construction management, etc. Verify and certify to the City that each project expenditure cost processed for progress payment is reasonable and eligible for EDA re-imbursement. Provide a monthly report to the City that compares the

## Scope of Work

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progress of project expenditures against the overall project time schedule for completion. Provide a monthly report to the City that reviews the status of the overall project cost to complete and provides recommendations to the City on correction measures necessary to ensure that final project expenditures will remain within DEA's approved budget.

13. Prepare progress re-imburement payment requests to EDA.
14. Prepare Project Final Report and Final Re-imburement Payment Report to EDA.
15. Prepare other reports and correspondence as required by EDA and/or the City of Calxico.
16. The City reserves the right to delete portions of work tasks.

### **The Following Items Of Work Tasks Are Not Listed In The City RFP, But Are Specifically Required By EDA:**

17. Construction Records
  - a. Daily Inspection Reports
  - b. Certified Payroll Records
  - c. Employee Interview
  - d. Weekly Working Day Statement
  - e. Contract Change Order (Required EDA Approval)
  - f. Material Testing Records.
  - g. DBE Compliance
  - h. Review & Approve Contractor's Progress Invoices
  - i. Liquidated Damage Assessment
  - j. As Built Plans
18. Prepare other EDA required reports:
  - a. Title opinion certification
  - b. Certificate as to project site, row and easements
  - c. Current and estimated employment data (required at project completion and 3<sup>rd</sup> & 6<sup>th</sup> year after project completion)
  - d. Assurances of compliance
  - e. GPRA data collection form
19. Miscellaneous Work
  - a. Assist the City in maintaining EDA's required reports, payment records to consultants and contractors, construction bid advertisement records, construction bids, project expenditure and cost accounting records, correspondence letters with EDA,

## Scope of Work

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consultants, contractors, and maintain all project records for future EDA audit requirements.

- b. Meet and coordinate with EDA to resolve any issues or inquiries and prepare any reports and documents in compliance with EDA's requirements.
- c. Attend City staff meeting (budget estimate for one but will work with staff as necessary to accomplish the desired project performance) and City Council meetings of not to exceed three (3), as needed.

### 20. **Optional Services**

**Note:** Emphasize that constant shall be compensated for work that might have begun which are not in sequence of listed tasks of performance. Additionally, work and tasks not specifically stated above shall be considered as extra work (i.e. works that are required to be performed by the Design Engineer for the PS&E, Plan Checking, and Construction Manager, additional City Council and Staff meetings, etc.) and to be billed based on Consultant's current fee schedule.

- 21. Modification and clarification to Optional Item 20 above for improvement plan checking function on Technical Design details is estimated at \$300.00/sheet of drawings (average of all project drawings). Checking of Sewer Pump Station hydraulics, calculation/and or report will be a Lump Sum fee of \$4,000.00.

**EXHIBIT B**  
**SCHEDULE OF CHARGES**

EDA Administration Services - Agreement  
W2 Design, Inc. and Traffic Safety Engineers

Concept	Amount
Total Estimated Consultant Cost not including No-lift Station Plans Check	\$ 71,890.00
Estimated Plan Check Fee for No-lift Station Plans (30 sheets)	\$ 9,000.00
Estimated Total Consultant Cost Including Plan Check Cost	\$ 80,890.00
Contingency 10%	\$ 8,089.00
Total Contract Amount Including Contingency	\$ 88,979.00



# Compensation



Per the Scope of Work, the W2 DESIGN/TSE Team proposes the following breakdown of fees by work tasks.

Work Task	Fee
<b>Lump Sum Fee</b>	
1	\$9,480
2	\$5,690
3	\$3,535
4	\$5,440
5	\$10,100
6	\$805
7	\$540
8	\$540
9	\$610
10	\$1,550
11	\$2,520
12	\$5,440
13	\$2,740
14	\$2,740
15	\$4,860
Estimated Reimbursable Costs	\$2,000
<b>Total LS FeeTasks 1-15 + Est. Reimbursable</b>	<b>\$ 56,590 + \$2,000 = \$58,590</b>
<b>Optional Additional Services</b>	
16	Not applicable
17	\$2,500
18	\$2,500
19	\$3,500
20	To be determined (see Item 21)
21	\$4,000 + \$300/Sheet
Est. Reimb. Costs	\$800

## Compensation

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<b>Total Optional Fee Tasks 17-19 &amp; 21</b>	<b><math>\\$8,500 + \\$800 = \\$9,300 +</math> <math>\\$4,000 + \\$300/\text{sht}</math></b>
<b>Total Estimated Budget include Technical Plan checking</b>	<b><math>\\$71,890 + \\$300/\text{sht of}</math> <b>Drawings</b></b>

**EXHIBIT C**

**CERTIFICATE OF EXEMPTION FROM WORKERS' COMPENSATION INSURANCE**

I hereby certify that in the performance of the work for which this Agreement is entered into, I shall not employ any person in any manner so as to become subject to the Workers' Compensation Laws of the State of California.

Executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2010, at \_\_\_\_\_,  
California.

\_\_\_\_\_  
**Consultant**